IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.80 of 2001

Date of decision : March 22, 2007.

State of Punjab

... Petitioner

versus

Balbir Singh

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal.

Present: Mr. G.P.S. Gill, AAG, Punjab
for the petitioner.

None for the respondent.

A.N. Jindal, J.

The State of Punjab has called in question the legality of the order dated 24.5.1999 passed by Sub Divisional Judicial Magistrate, Batala, vide which the accused-respondent Balbir Singh (hereinafter called as the 'respondent'), Proprietor of M/s R.P. Agro Industry, Aliwal Road, Batala, was discharged for the offence under Sections 406/408/409 IPC. The FIR No.104 dated 7.5.1996 was registered against the accused on the allegations that the Food Corporation of India, had stored paddy for the year 1994-95 in their mill premises and with a promise that they will keep the same in the safe custody unless allotted to it. During investigation, it was found that paddy lying with the accused were recorded to be as follows :-

P.R.-106	***Bags***	***Weight Qtls. Kgs***
Dispatched	40629	26392.65
Delivered rice	11250	10672
Balance	3003	2017.01
I.R.-8	***Bags***	***Weight Qtls. Kgs***
Dispatched Paddy	11309	7347.57
Delivered rice		6549.49
Balance	13066	798.12

The paddy so stored with the respondent was worth

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Rs.60,17,026.91P for which he could not account for. Neither he returned the paddy nor he counted for the same after milling it.

The trial Court at the stage of charge, after taking into consideration the notice issued to the accused for recovery of Rs.58,19,870.67P and an agreement executed between the parties, discharged the respondent. Hence this revision petition.

None appeared on behalf of the respondent.

I have perused the records of the case. The trial Court at the time of framing of the charge was to examine prima facie if a case for breach of trust and misappropriation of the amount is made out against the accused and could not go deep into the facts of evidence and form an opinion if the trial could end in conviction. It has been held by the Apex Court in case ***State of Orissa vs. Debendra Nath Padhi, 2003(2) RCR (Crl.) 116 (SC)*** that at the stage of framing of charge, there is no requirement in law that the Court should either give an opportunity to the accused to produce evidence in defence or consider such evidence produced by the accused. While relying upon the aforesaid judgment, this Court in case ***Jarnail Singh and another vs. State of Punjab, 2006 (4) RCR (Crl.) 712*** observed as under :-

> *".... The section is quite clear that whatever consideration that has to be made by the Court, will have to be based on the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution. If after doing so, the Court comes to the conclusion that there is ground for presuming that the accused has committed an offence then the Court shall frame charge under Section 228 of the Code, otherwise it shall discharge the accused under Section 227 of the Code. Almost similar is the requirement of law when a warrant case is being considered for framing a charge under Section 240 of the Code. In my opinion, the right of summoning some documents in defence cannot be invoked at the stage of framing of charge and the relevant stage for the accused to produce the documents is at the defence stage."*

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Again the trial Court, at the stage of framing of charge, was not to examine the documents as produced by the accused in defence. Similarly, this fact also cannot be lost sight of that the civil as well as criminal proceedings can continue simultaneously. The Apex Court in case ***Lalmuni Devi (Smt.) vs. State of Bihar, 2001 (1) RCR (Crl.) 228*** observed as under :-

> *"There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."*

Again the Apex Court in case ***M. Krishnan vs. Vijay Singh and another 2001 (4) RCR (Crl.) 405***, while considering various authorities had held that mere filing of the civil suit with respect to the documents gives no ground for quashing criminal proceedings, as the allegations in the complaint need to be independently established. The Court held as under :-

> *"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a Criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a Civil Court. Had the complainant failed to prove the*

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allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

The trial Court fell in error in appreciating the evidence led by the accused at the stage of framing of charge and pass an appropriate order after examining the report under Section 173 Cr.P.C. and other documents accompanied to it. Consequently, interference by this Court is called for.

For the foregoing reasons, I accept the revision petition, set aside the impugned order and remit the case back to the trial Court with the directions to proceed in accordance with law and dispose of the trial as expeditiously as possible.

March 22, 2007 (A.N. Jindal)
'deepak' Judge